

May 28, 2008

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Kimberly J. Excel

Date of Filing: April 30, 2008

Case Number: TFA-0254

This Decision concerns Kimberly J. Excel's Appeal from a determination that the Department of Energy's (DOE) Richland Operations Office (ROO) issued to her on February 7, 2008. In that determination, the ROO responded to Ms. Excel's request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as the DOE implemented in 10 C.F.R. Part 1004. This Appeal, if granted, would require the ROO to perform an additional search and either release newly discovered documents or issue a new determination justifying their withholding.

I. Background

Ms. Excel filed a FOIA request with the ROO for the following records regarding her deceased father, E.C. Warren:

- (i) "Employment records; including but not limited to job descriptions, transfers, job assignments, training, housing, awards, reprimands, pay records, union records."
- (ii) "Exposure records; including but not limited to all films, x-rays, log books, hand written notes, yearly summaries, weekly summaries, lost badge information, incidents during employment period, chemical handling, supervisor's log books, hand written notes, electronic records."
- (iii) "Medical records; including but not limited to employment physicals, on the job injury records, first aid records, hospital records."
- (iv) "Training records; including but not limited to qualifications for hazardous material handling, safety, radiation training, driver training."

E-mail from Rosemary Hoyt, Personal Assistant to Ms. Excel, to Office of Hearings and Appeals (OHA) filings, Mar. 5, 2008; E-mail from Rosemary Hoyt, Personal Assistant to Ms. Excel, to William Schwartz, Attorney-Examiner, OHA, Apr. 21, 2008.

In the ROO's determination letter, it explained that AdvanceMed Hanford, which maintains Mr. Warren's medical record for the DOE, will forward his medical record directly to Ms. Excel. The ROO enclosed Mr. Warren's radiation exposure record. The ROO was unable to locate Mr. Warren's employment or training records. Determination Letter, Feb. 7, 2008.

Ms. Excel then filed the present Appeal with OHA. Facsimile from Rosemary Hoyt, Personal Assistant to Ms. Excel, to David M. Petrush, Attorney, OHA, received Apr. 30, 2008 (containing the determination letter that the ROO issued to Ms. Excel). Ms. Excel stated that she "received a few transfer documents but nothing else." E-mail from Rosemary Hoyt, Personal Assistant to Ms. Excel, to William Schwartz, Attorney, OHA, Apr. 21, 2008. Regarding the exposure records, Ms. Excel stated that she did not receive "nearly all records." Regarding the medical records, Ms. Excel stated that she "received employment physicals and first aid records, nothing else." Lastly, Ms. Excel stated that she received no training records. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, courts have established that an agency must "conduct[] a search reasonably calculated to uncover all relevant documents. . . ." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542.

We have not hesitated to remand a case where the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (Aug. 26, 2002) (Case No. VFA-0760) (remanding for a renewed search where DOE's initial search missed responsive documents that were later found); *Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (Dec. 13, 1995) (Case No. VFA-0098) (remanding where there was "a reasonable possibility" that responsive documents existed at an unsearched location).

We contacted the ROO to request additional information so that we could evaluate its search. We learned that the ROO contacted AdvanceMed Hanford for medical records, Pacific Northwest National Laboratory for radiation exposure records, and the Records Holding Area and Fluor Hanford, Inc. for archived employment and training records. The searches were performed by contractor personnel who maintain the records and who are most familiar with the subjects of Ms. Excel's request. They searched electronic, paper files and microfiche by name and social security number. E-mail from Dorothy C. Riehle, Freedom of Information Specialist, ROO, to David M. Petrush, Attorney-Examiner, OHA, May 6, 2008.

The ROO stated that the files most likely to have information responsive to Ms. Excel's request were searched. We agree. For this reason, we find that the ROO conducted a search that was reasonably calculated to uncover all relevant documents, and was therefore adequate. Therefore, we will deny Ms. Excel's Appeal.

* OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

It Is Therefore Ordered That:

(1) The Appeal that Kimberly J. Excel filed on April 30, 2008, OHA Case No. TFA-0254, is denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 28, 2008